

REMARKS

Claims 35-43, 47, 49, and 51 are pending in this application. By this Amendment, claims 44, 45 and 50 are cancelled without prejudice or disclaimer. Claim 35 is amended and claim 51 is added. No new matter is added. Claim 35 is the independent claim.

Neveu Reference

U.S. Patent 3,961,418 to Neveu is applied against the outstanding claims as prior art. However, the reference is not listed on Form PTO-892 and has not been cited previously during the prosecution of the present application. Accordingly, application of the Neveu reference as prior art is improper. However, to avoid undue delay in prosecution, Applicants address the rejections under Neveu below. Applicants respectfully request that Neveu be properly cited in the Form PTO-892 in the next Office Action, or that the outstanding Office Action be withdrawn and a new Office Action issued properly citing the reference.

Allowable Subject Matter

As claim 37 is not rejected over a prior art reference, Applicants understand that the subject matter of claim 37 is allowable. In the event claim 37 is not allowable, Applicants respectfully request withdrawal of the outstanding Office Action and a new Office Action issued properly identifying grounds for rejecting claim 37.

Drawings

The drawings are objected to under 37 C.F.R. §1.83(a) for allegedly failing to show each feature recited in the rejected claims. Specifically, it is alleged that the “inclined blade” of claims 44, 45 and 50 is not shown in the drawings. As claims 44, 45 and 50 are cancelled, withdrawal of the objection to the drawings is respectfully requested.

Rejections Under 35 U.S.C. §103 over Neveu

Claims 35, 36, 38, 39, 41-43, 47 and 49 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,961,418 (“Neveu”). The rejection is respectfully traversed.

Neveu fails to disclose or suggest each and every feature recited in the rejected claims. For example, Neveu fails to disclose or suggest a vegetable peeler for peeling in a peeling direction, comprising two lateral gripping surfaces, interconnected by a peeling blade and a cross

piece, wherein the peeling blade has a cutting edge and a guiding piece that regulates a thickness of a removed peel, as recited in independent claim 35.

Neveu relates to a device for cutting off strips of lemon rind for a desired purpose (column 2, lines 25-46). The claimed peeler of Neveu has a generally horseshoe-shaped frame 10. The frame 10 may be provided with a concave recess 14 so that the frame may be directed by a thumb and index finger of a person. An arcuate shaped blade 22 is fastened within the frame 10 by having its ends mounted against apertures 24 formed in the inner surface 26 of the frame 10 (column 1, line 59 – column 2, line 43; Figs. 1 and 2). In use, a lemon is rotated manually about its longest axis to remove the skin or rind of the lemon as schematically illustrated at Fig. 5.

It is alleged in the Office Action that Neveu discloses two lateral gripping surfaces interconnected by a blade and a cross piece, wherein the two lateral surfaces together with the cross piece form a substantially U-shape holder, and the peeler is shorter in the peeling direction than a distance between the lateral surfaces of the peeling blade. Applicants note that the Office Action fails to identify all of the features recited in the rejected claim. For example, there is no recitation or allegation that Neveu discloses the additional feature of claim 1 of “wherein the distance between the lateral gripping surfaces that the peeling blade is larger than a length and a height of the vegetable peeler.” As such, a *prima facie* case of obviousness has not been established.

Moreover, although it is alleged in the Office Action that the peeler is shorter in the peeling direction than a distance between the lateral surfaces of the peeling blade, there is no support provided, nor any corresponding structure identified in Neveu of the peeling direction so that it may be determined whether the peeler is shorter in the peeling direction than the distance between the lateral surfaces of the peeling blade. When rejecting claims for obviousness, the Examiner must cite the best references at his command and particular parts relied on must be designated as nearly as practicable (37 C.F.R. §1.104). As all of the features in the rejected claims have not been identified, nor has corresponding structure been designated, the requirements of 37 C.F.R. §1.104 have not been met, nor has a *prima facie* case of obviousness been established.

Moreover, Neveu fails to disclose or suggest that “said peeling blade has a cutting edge and a guiding piece that regulates a thickness of a removed peel.” Neveu discloses a cutting blade 22 (column 2, lines 9,10) which is not the same element as a peeling blade. A person

skilled in the art of cutting and peeling would know the difference between these two elements. For example, a cutting blade is a single piece with a cutting edge. To make a cut in a distinct direction the cutting blade has to be held with the corresponding orientation. In contrast, a peeling blade includes a cutting edge and a guiding piece that regulates a thickness of a removed peel. During peeling action the orientation of peeling blade and the cutting edge is defined by the guiding piece. To make the expression “peeling blade” even more clear, amended claim 35 now further defines elements of a peeling blade: “said peeling blade has a cutting edge and a guiding piece that regulates a thickness of a removed peel.” This amendment is not a new feature but rather a more clear formulation of the feature “peeling blade,” which is also supported by the detailed description of example embodiments (second paragraph). There is no guiding piece in Neveu and, therefore, Neveu fails to render the rejected claims obvious. Accordingly, withdrawal of the rejection is respectfully requested.

Rejection Under 35 U.S.C. §103(a) over Kuan

Claims 35 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,619,194 (“Kuan”). The rejection is respectfully traversed.

Applicants submit that the applied reference is not available as prior art and, therefore, cannot form the basis of a rejection under 35 U.S.C. §103(a). The present application claims priority from Swiss Patent Applications Nos. 943/02 and 314/02, which were filed on June 5, 2002 and February 22, 2002 respectively, which dates precede the November 12, 2002 filing date of Kuan.

Verified English language translations of the priority documents will be submitted to perfect the claim for priority. Therefore, Kuan is not available as prior art. Accordingly, withdrawal of the rejection is respectfully requested.

Rejection Under 35 U.S.C. §103(a) over Kuan in view of Yonezawa

Claims 44, 45 and 50 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kuan in view of U.S. Patent No. 5,865,110 (“Yonezawa”). As claims 44, 45 and 50 are cancelled, the rejection of those claims is moot.

CONCLUSION

In view of the above remarks and amendments, the Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Donald J. Daley, Reg. No. 34,313, at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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